



REGULAR MEETING MINUTES
for
December 11, 2002, 5:30 p.m.
Art Pick Council Chambers
3900 Main Street, Riverside, CA

Present: Commissioners Brewer, Davidson, Floyd, Garcia, Gardner, Howe, Huerta and Ward

Absent: Commissioner Hendrick

Roll Call

Executive Director's Report & Comments

Mr. Williams said he had nothing except Item 5.

Commissioner's Comments

Commissioner Howe said that his nephew was murdered the previous week and he wanted to say that he appreciated all the support he had received. He gave the date, time and place of the memorial and funeral services.

Vice-Chair Gardner said that he had prepared a draft of proposed amendments for the Policies & Procedures Subcommittee's consideration. He said he would like the subcommittee to meet next week to review the proposed amendments.

Commissioner Huerta asked who was on the subcommittee. Vice-Chair Gardner said Commissioner Ward, Commissioner Garcia and himself, with the chair being an ex-officio member.

Commissioner Garcia said that he went on a ride-along the previous week with one of the officers who is being nominated for Officer of the Year. He said the officer gave him a lot of useful information and he wished the officer the best and congratulated him on his nomination.

Discussion – CPRC Investigation into the Officer-Involved Death of Anastacio Muñoz

Chairman Brewer began by saying that he had erred at the last open meeting by not asking the commissioners if they had any comments and also by not informing the audience that an investigation would be conducted into the shooting of Mr. Muñoz. He also said that the investigation has already begun. He then turned the discussion over to Mr. Williams.

Mr. Williams said that he wanted to clarify some issues that weren't made clear at the previous meeting and also to update everyone as to what has been done so far.

He said that it is very clear, based on the ordinance and the Commission's Policies and Procedures, that when there is an officer-involved citizen death the Commission has no option but to conduct an investigation. He said that whenever these incidents occur, the Commission needs to restate its policy regarding this issue.

Mr. Williams said that Mr. Muñoz was shot on November 17, 2002, but passed away on November 18. He noted that the Commission had no jurisdiction over the incident until Mr. Muñoz' death. Mr. Williams said that several things were done as soon as he learned that Mr. Muñoz had died. First, all information in the public arena – mainly newspaper articles, but anything else that might pertain to the incident – was being collected. Second, Mr. Williams contacted the Commission's contract investigator to advise them that their services would be needed. He gave them all the information available to him at the time so they could begin their investigation. Next, a briefing by RPD was planned and this took place on November 25.

Mr. Williams continued, saying that he met with our investigator the previous Friday to review information that he had gathered. The investigator watched the videotape of the RPD briefing. The two of them then developed a strategy and a list of questions to ask witnesses. After the investigator returned to his office, he developed an extensive outline, which he e-mailed to Mr. Williams.

Mr. Williams said that the investigator would be returning to Riverside on Dec. 12 to go to the incident sites. The investigator was also planning to do some "door knocking" in the evening when there would be a better chance of finding people at home. The investigator will be determining who is actually a witness and determine if there is any physical evidence.

Mr. Williams said it is too early to predict when the investigation might be completed, but suspects in the spring given the fact that some information will be in the RPD's report and the Commission would have to wait for that report to be completed. He said the Commission will go as far as possible without RPD's assistance. He also said the Commission would be able to use what is contained in the criminal investigation, which will be public record once the District Attorney has made his decision.

Mr. Williams asked the commissioners to be thinking about how and when they want to present the public case. He said that would come well before any kind of decision made by the Commission regarding the case on whether the shooting was within RPD policy. He said this would be a report published for the public describing the incident in detail. He said that would be possible because it would be based on the work of the Commission's investigator and would include nothing of a confidential nature from the Police Department.

Mr. Williams concluded by saying that was "where we've been, where we are now, and where we're intending to go in about as good a time frame as I can possibly give you at this point."

Commissioner Davidson said that it was enlightening and encouraging to see that there was such a quick reaction to this incident, which was what the Commission wanted to get across to the public and letting the public know that the Commission is as concerned as they are about this incident. He said the Commission would be anxiously waiting for the investigation so that they can make decisions based on the outside investigation.

Chairman Brewer said that the Commission's decision won't be made until all information from all investigations is received. Commissioner Davidson said that he understood and had meant that when the Commission receives all facts, they would be able to make their decisions.

Commissioner Floyd said that he realized that while the investigation was in its preliminary stages, he said he hoped that the Commission would endorse his request in asking Mr. Williams to advise the Commission if at any time he felt that the investigation was being impeded or compromised so they could

resolve the issue and seek assistance from higher sources, if necessary. Mr. Williams agreed to this, but said that, so far, there have been no problems.

Commissioner Davidson asked if Item 4 – Public Comment – had been missed. Chairman Brewer said he'd not been given any Request to Speak forms. Mary Shelton had a question regarding public comments. Mr. Williams responded by saying that the item for public comment was to give the public a chance to speak on subjects not on the agenda. If a person wanted to speak on an agenda item, but also on something not on the agenda, they could actually speak twice.

Mary Shelton

Ms. Shelton said she had a couple questions. She asked if any of the officers involved in the Muñoz incident would be interviewed in the course of the CPRC investigation. She said she wondered because she knew that the RPOA was “highly resistant” to any form of independent investigation conducted by the CPRC. She said she wasn't clear on how the questioning and officers' rights differed between an Internal Affairs investigation where officers are compelled to respond to questioning and the Commission's investigation and whether or not officers are compelled to answer.

Ms. Shelton then asked what would happen if the Police Department says a shooting is justified and the Commission says it's not. She said that situation has happened in other cities and cited Los Angeles as an example. She wanted to know which investigation prevails.

In response to Ms. Shelton's first question, Chairman Brewer said that the Commission does not have the authority to compel officers to be interviewed by the CPRC investigators. In response to her second question, Chairman Brewer said that the findings of both the RPD and the Commission go to the City Manager and it is up to the City Manager to make the final decision.

Commissioner Floyd said that the Commission does have subpoena power. He said that officers could be subpoenaed, but it remains to be seen as to whether or not they would answer any questions. He said that he wasn't convinced that the Chief of Police doesn't have the authority to order officers to cooperate with the Commission in an investigation. He said he didn't know of any legal reason why the Chief couldn't order officers to cooperate with the Commission in an investigation. He said it is conceivable to him that the Commission could have an opportunity to interview the officers, if the Police Department cooperates. He said that Mr. Williams might want to get advice from the City Attorney on that issue. He doesn't think it's a foregone conclusion that the Commission wouldn't have the opportunity to talk to the officers if the Chief orders them to talk.

Chairman Brewer asked Mr. Williams if he hadn't had discussions with the City Attorney on the issue. Mr. Williams said that while officers are not compelled to give statements for the criminal investigation, they are compelled to give statements to Internal Affairs. He said that while we get that information from Internal Affairs, the Commission has to be careful about what is made available to the public. He said that after the District Attorney finalizes the criminal assessment but before we get the Internal Affairs investigation, the Commission would probably want to make a public report with the information available up to that point.

In regard to compelling officers to be interviewed by the Commission's investigator, he said the City Attorney has looked at that issue, but said there hasn't yet been an occasion to push the issue. He said that a couple of things are being looked at, but he didn't want to say anything until there was some discussion. He said this would, however, be “down the line” to try to resolve these issues.

Mr. Williams said again that the Commission will have access to the interviews, but didn't know if the Commission's investigator would be allowed in during the interviews or if we'd be able to submit questions. He said that was something that was being worked on so that all the Commission's questions are answered. He invited the commissioners to come by the office to review the investigator's outline.

Commissioner Ward said that the Commission needs clarification on its access to officers. He said that he didn't know how the Commission could conduct a thorough investigation into an incident such as the Muñoz incident where it took place early in the morning, the victim is deceased and the only witnesses are police officers. He said he wasn't sure how officers' rights figured into this type of situation, but if the officers are the only witnesses and the Commission is charged with doing an investigation, he said it seems that the Commission should have access to the people who were involved.

Mr. Williams said he thought it would be helpful for the commissioners to first re-read Section 4.30, the Use of Force policy of the RPD Policy and Procedures. He said that the policy talks about what a reasonable person would do in the same situation with the same training as the officer. He said you only look at the officer's perspective, because that's what legally counts, and if there are other witnesses to the incident, there may be a small variation in the accounts due to lighting or being half asleep, you would still be looking at the officer – what he did and why he did it – and judging as to whether or not it was a reasonable thing for him to do. He said that based on the information presented in RPD's briefing to the Commission and the statements given by the officers, the commissioners would have to review the information and ask themselves if the shooting was something a rational, reasonable person would do in the same circumstances with the same background and training. He said that's where it gets tough because the commissioners will have to put themselves in the other person's shoes to make that decision.

He said he felt it was important for the officers to answer the Commission's questions, but in the end, thought that it would be the officer's story of what happened and whether or not they believe it is reasonable and it fits the physical evidence.

Chairman Brewer said that the Commission would eventually see the officers statements.

Commissioner Ward said he realized that, but that he was having a problem with the fact that the Commission doesn't have immediate access to the involved officers' report, saying that the report the Commission sees several months after the incident may not be the same report written by the officer immediately after the incident. He said that if you have the initial report immediately, there is a basis from which to work. He also said that if the Commission has to wait several months to get the report and is dealing with a community that doesn't trust its police department, why does the Commission think that the community will think the information they are receiving is accurate or that it hasn't been altered to fit the circumstances.

Mr. Williams said that the involved officers don't make reports in these types of incidents. He said the officers involved in the Phaisouphanh incident made no reports. He said officers who came to the scene later wrote the initial reports. He said that when an officer is a suspect in an incident, he doesn't write a report. He said the reports are part of a criminal investigation and the officers exercise their Fifth Amendment rights by not giving a statement and not writing reports. He said that the only in-depth report will be the one from Internal Affairs.

Commissioner Garcia asked if the subpoena powers could be used to get additional information for investigators. Mr. Williams said information could be subpoenaed, as could the people, but whether they choose to speak or not is a different question. He said that he felt that if we needed information from RPD, we would be able to get it. He said he if there is a reason to believe the information is going to be tampered with, that's one thing, but generally RPD prefers to give us the information in the investigative package. He said that's something we'd find out if there are other witnesses to the incident.

Chairman Brewer said to keep in mind that other agencies are also conducting investigations and that the Commission would eventually have copies of those investigations.

Commissioner Floyd said that he is inclined to agree with Commissioner Ward in the sense that the Commission is charged with conducting an independent investigation and the officers are critical

witnesses to this incident. He said that he thinks the Commission should make every legal effort to assure that the involved officers are available to answer our investigator's or the Commission's questions. He said that he isn't satisfied to wait for RPD's report. He said one of the reasons for the creation of the CPRC was so that independent investigations could be conducted. He said that he feels the Commission should conduct its own investigation and not rely on what RPD does. He said he thinks that is contrary to the purpose for which the Commission was created.

Mr. Williams said he said wait because there are certain things the Commission could on recreate and they would have to wait for that information to come from RPD, physical evidence such as the location of slugs or spent shells. He also said that by the time the Commission had jurisdiction over the incident, the scene had already been cleaned up. He said the issue of officers being interviewed by the CPRC investigator needs to be explored, an answer found, and go from there. He said he felt that to be appropriate, but said he was not in a position to say one way or the other because he doesn't have the legal background.

Vice-Chair Gardner said that information regarding the crime scene, the information gathered that night, is prepared and exists and that the CPRC investigator might find that information useful. He said it might be worth asking to see if it's available now.

Mr. Williams said he could ask, but that the information is in the custody of another department over which he has no control.

Vice-Chair Gardner said he thought the information should be requested and if the Department declines to give the CPRC the information, then the Commission should be told and decide whether they want to take any further steps, such as a stronger request, a subpoena or a number of other things if the Commission decided it wanted to in an attempt to make the information available to its investigator earlier rather than later in the process.

As for interviewing officers, he said the Commission is assuming that if an officer is asked to come in and answer questions or give a statement, the officer will say no. He said that is the position of the RPOA, but while that's what they are there for, the officer has every right to meet with the Commission.

Mr. Williams said that he didn't want to give anyone the impression that we could "just snap our fingers and these things are going to fall out of the sky." Vice-Chair Gardner said he didn't want Mr. Williams thinking that the Commission is happy waiting. Mr. Williams said he doesn't, but wanted everyone to understand that some of the issues are not within his control. He said he doesn't have a problem asking. He said once he meets with the CPRC investigator and finds out what he's learned, he will be able to better determine what RPD might have that would help further the Commission's investigation.

Mr. Williams again said he has no problem asking RPD for information. If he is refused, he would do as Commissioner Floyd suggested and report back to the Commission on the situation. Vice-Chair Gardner said that was all they were asking. Mr. Williams said he appreciated the backing on the issue.

Chairman Brewer said that the Commission can't compel officers and while they can be subpoenaed, the Commission can't force them to be interviewed.

Commissioner Floyd said he agreed in that the Commission only has the authority to subpoena an officer. He said again that he is not convinced that the Police Department can't compel an officer to cooperate with the Commission's investigation. He also said that he agreed with the comments that had been made that should an officer be compelled to give a statement to the Commission, that statement could not be used against the officer in a criminal case because it is compelled. He said there might also be confidentiality requirements should an officer give a statement to the Commission or its investigator.

Commissioner Garcia asked that the questions being raised this evening be given to the Commission's investigator.

Mr. Williams said he hadn't heard any questions raised about the scene, but again encouraged the commissioners to come in and review the investigators outline and if there were some things they wanted to add, that could be done. He said the document would grow as the investigator added information to it. Chairman Brewer said he didn't think the commissioners should have questions until they see what the investigator has learned.

Commissioner Davidson said he sees this as a double-edged sword. He said it would be good to be able to talk to the officers, but said he didn't think they would talk to the Commission. On the other side, he said it sounds like the CPRC investigator is already "out there" collecting evidence, talking to witnesses and getting all the necessary information together. He said he has yet to see a case where if someone is going to lie, they are going to be caught if the investigator does a thorough job. He said he is patiently waiting because he thinks the right things is being done by having the investigator out there doing his job and the information being given to the Commission when it comes in. He said he didn't know whether the Commission's primary position should be to push to the point where the police officers become everything.

Mr. Williams said he would be getting bi-weekly updates and that that information would be passed on to the Commission. He said he might be more minutia than the commissioners cared to see, but that they would have to let him know if that were the case. He said that at this point, he is more interested in the physical evidence because that will be the truth, it doesn't lie, doesn't have a different perception.

Mr. Williams said he doesn't want to wait a number of months and said no one does, including the Chief. He said that hopefully the timeliness of this case will be better than the first case and if there is any tweaking, it will be minor.

Commissioner Ward said he is concerned that the Commission doesn't duplicate on this second case the mistakes that were made on the first case. He said that when the Commission finally received information on the first case, the commissioners had two or three big three-ring binders along with numerous tapes to review eight months after the incident. He said that is not how an investigation should be conducted. He said whatever information the Commission is entitled to should be given to them as it becomes available so they can review this information on an on-going basis. He said none of the commissioners has the time to come in and review 1,500 pages of documents and listen to 25 or 30 tapes to try to determine the truth eight months after the fact. He said he hopes the Commission doesn't repeat that situation.

Discuss signing of Ride-Along Waivers

Chairman Brewer said that a letter was prepared, signed by the Chair, and send to the Chief of Police, as requested, regarding waiving the signing of ride-along waivers by commissioners. He said that he and Mr. Williams attended a meeting with the City Manager, the City Attorney and the Police Chief. The Chief brought up the subject, saying everyone is required to sign the waiver. The Chief said it was written by the City Attorney so that the City would be protected from law suit and that they weren't waiving the signing of the waiver for anyone.

Commissioner Howe said he was glad the issue was finally cleared up.

Commissioner Huerta asked if it was the Chief or legal counsel who responded. Chairman Brewer said they were all present at the same meeting. Commissioner Huerta asked if legal counsel confirmed that that is the City's position that they would not support the commissioners if they do

ride-alongs. Chairman Brewer said that he was told they would not waive the signing of ride-along waivers.

Chairman Brewer entertained a motion for adjournment, which was moved by Commissioner Floyd and seconded by Commissioner Garcia

The Commission adjourned at 6:27 p.m.

Respectfully submitted,

PHOEBE SHERRON
Sr. Office Specialist